

**REMARKS**

The Office Action requires an election under 35 U.S.C. Section 121. Applicants have been asked to elect specific components in addition to glufosinate and lignin sulfonate.

Applicants provisionally elect, with traverse, <sup>(1)</sup> paraquat as a further agrochemically active compound, <sup>(2)</sup> Genopol<sup>®</sup> LRO as a surfactant, <sup>(3)</sup> urea as a fertilizer and <sup>(4)</sup> oil as an adjuvant, for further prosecution.

However, reconsideration and withdrawal of the restriction requirement are respectfully requested in view of the remarks herewith.

It is Applicants' understanding that, upon the allowance of a generic claim, Applicants will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all of the limitations of an allowed generic claim, as provided by 37 C.F.R. 1.141. It is also understood that the Examiner can broaden the search to include other species, e.g., upon determining that a species is allowable, or as discussed herein, when there is a relationship among the species and/or number of species is not too great.

In this regard, M.P.E.P. § 808.01(a) states that "where there is no disclosure of relationship between species (*see* M.P.E.P. §806.04 (b)), they are independent inventions and election of one invention" is required. In view of M.P.E.P. §803, however, when the generic claim includes sufficiently few species that a search and examination of all the species at one time would not impose a serious burden on the examiner, then a requirement for election is inappropriate. Moreover, MPEP 803.02 specifically provides that members of a claimed *Markush* group must be searched and examined together, if they are not too many in number.

Examination of the generic claims, without election, does not impose a serious burden on the Examiner. An examination of claims wherein paraquat is the further agrochemically active compound, for example, would inevitably encompass a search that included other pesticides. No election should therefore be required.

Enforcing the present restriction requirement would result in inefficiencies and unnecessary expenditures by both the Applicants and the PTO, as well as extreme prejudice to Applicants (particularly in view of GATT, a shortened patent term may result in any divisional applications filed). Restriction has not been shown to be proper, especially since the requisite showing of serious burden has not been made in the Office Action and there are relationships between all of the claimed combinations. Indeed, the search and examination of each

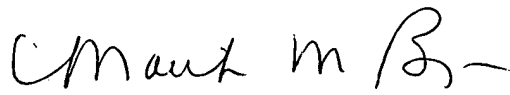
combination is likely to be co-extensive and, in any event, would involve such interrelated art that the search and examination of the entire application can be made without undue burden on the Examiner. All of the preceding, therefore, mitigates against restriction.

In view of the above, reconsideration and withdrawal of the Requirement for Restriction are requested, and an early action on the merits earnestly solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG, LLP  
Attorneys for Applicants

By:



Marilyn Matthes Brogan  
Reg. No. 31,223  
(212) 588-0800